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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 35 OF 2007

Commissioner of Central Excise ... Appellant

Versus

Mahindra & Mahindra Ltd. ... Respondent

Mr. P.S. Jetly with Ms. Anamica and Mr.K.R. Chaudhari and Mr. H.P.Chaturvedi for Appellant.

Mr. Mehul Shah i/by A.N.S. Law Associates for Respondents.

CORAM: F.I. REBELLO &
R.S.MOHITE, JJ.
DATED: DECEMBER 13, 2007

P.C.

. The Revenue has preferred this appeal on the following question :

> "(a) Whether the Tribunal was right in law in rejecting the appeal filed by the Revenue pertaining to non-imposition of penalty of Shri. Mohan Raghavan, General Manager (Excise), by relying on its order dated 23.11.2005 whereby it had set aside the Order-in-Original."

. The proceedings have been initiated against the company Mahindra and Mahindra as also against Mr.Mohan Raghavan, General Manager. No penalty was

imposed against Mr. RAghavan, whereas penalty was imposed against the company. The Revenue preferred an appeal against non imposition of penalty on Mr. RAghavan whereas the assessee preferred an appeal against the imposition of penalty. The appeal of Mahindra and Mahindra, assessee was allowed by order dated 23.10.2005. When the appeal preferred by Mr. Raghavan came to be heard before the tribunal, they proceeded on the footing that the order against the assessee company had been allowed, the appeal preferred by the Revenue against Raghavan has to be rejected and accordingly rejected the same.

. In so far as the order of the tribunal against the company is concerned, the appeal has been filed on 24.8.2006.

. The contention on behalf of both the parties that in so far as appeal of the Revenue against Mr. Raghavan, that had to be considered independently irrespective of whether the appeal of Mahindra and Mahindra was allowed or rejected as no penalty had been imposed on him even if some of the contentions may be common.

. We are in agreement with the said view. Consequently impugned order dated 4.4.2006 is set aside. The matter is remanded back to the tribunal

for re-hearing the appeal filed against Mr. Raghavan and to dispose it off according to law on its own merits. Petition disposed of accordingly.

(R.S.MOHITE, J.) **(F.I.REBELLO, J.)**